IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1080 OF 2007

IN

SUIT NO.2841 OF 1987

Juhu Beach Resorts Pvt. Ltd. & Ors. .. Plaintiffs.

Versus

Hotel Empire Ltd. .. Defendants.

Mr.Navnit Shah with Mr.Rajesh Shah with Ms.Samidha Vedpathak i/b.Maneksha Sethna for plaintiffs.

Mr.K.R.Bulchandani i/b.Kamal & Co. defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd September, 2007.

P.C.:

1. Heard Mr.Shah appearing for the plaintiffs and Mr.Bulchandani appearing for the defendants.

2. Mr.Shah submits that the chamber summons seeks to amend the plaint to incorporate additional pleas with regard to the claim being within limitation. There are

certain alternate pleas raised, based upon which, it is contended that the possession of the plaintiffs is sought to be protected. In other words, the plea of part performance is sought to be raised. The original claim is for specific performance. Now, there are additional pleas that are being raised, based upon which, the prayer clauses would undergo a change. However, neither the main relief nor the cause of action, upon which it is based is being changed or given a go-bye. In such circumstances and applying liberal principles, the amendment deserves to be granted.

3. Mr.Bulchandani appearing for the defendants opposed the chamber summons on the ground that the suit is of the year 1987. The written statement is filed in July, 2006. In the written statement, several pleas are raised, including the Bar of Limitation. In these circumstances now that the plaintiffs are aware of the stand of the defendants, permitting them to amend the plaint would be prejudicial and, therefore, the chamber summons be dismissed.

4. Reliance is placed upon the following decisions :-

1) AIR 1998 SC 618 (Heeralal v/s.Kalyanmal).

2) AIR 1977 SC 680 (M/s.Modi Spinning & Weaving Mills Co. Ltd. & Anr. v/s.M/s.Ladha Ram & Co.)

3) 1998 AIHC 3955 (Lashkar Singh & Anr. v/s.Bhulla Singh)

4) AIR 1996 SC 2358 (Radhika Devi v/s.Bajrangi Singh)

5) AIR 1967 SC 96 (A.K.Gupta & Sons Ltd. v/s.Damodar Valley Corpn.)

6) AIR 1995 SC 1768 (K.Raheja Construction Ltd. v/s.Alliance Ministries & Ors.)

5. I have perused the chamber summons and the affidavit in support and the reply thereto. The plaintiffs have averred that due to inadvertence, it was not pleaded that the claim in the suit is within limitation. It is submitted that even otherwise, the claim would not be barred but certain pleas need to be incorporated with regard thereto. The alternate plea of part possession is based upon the fact that the plaintiffs

are put in possession.

6. The affidavit in reply of the defendants does not dispute the well settled principles. However, it is urged that it will have no application. They proceed to state that even if the plaintiffs are allowed to amend the plaint, the claim is hopelessly time barred. Similarly, the alternate plea also has no substance, considering the pleas in the written statement.

7. Mr.Bulchandani could not point out to me as to how incorporating the above pleas would change the structure of the suit or would be prejudicial to the rights of the defendants including the plea that the suit claim is hopelessly time barred. The reliance is placed on the decisions of the Supreme Court and the other decisions. Further, an alternate plea being raised in the pleadings is not something an usual. Even if the alternate plea is raised is belated. The defendants are not prejudiced because they can contend that not only original claim but the alternate claim is also hopelessly time barred. All such contentions as also those on merits are never gone into and touched upon while deciding such applications. On the other hand, equally well settled ratio of the Hon’ble Supreme Court that all amendment applications have

to be liberally considered and must be applied to this case, more so, when the written statement is also filed in the year 2006.

8. In the above circumstances, the chamber summons is made absolute in terms of prayer clause (a). The amendment to be carried out within a period of two weeks from today. A copy of the amended plaint to be served on the defendants within a period of two weeks from the date of carrying out the amendment. It is clarified that all pleas, including that of limitation are expressly kept open and no opinion is expressed thereon.

9. Supplementary written statement, if any, to be filed within a period of four weeks from the date of receipt of the amended plaint. Both sides do not dispute that Suit No.3085 of 1987 and the present suit involves the same property and to that effect, a statement is filed by the defendants in Suit No.2841 of 1987. In this view of the matter, interest of justice would be subserved if both suits are consolidated and taken up for trial. Office to take appropriate directions and proceed. Matter to be placed on Board for framing of issues on 15th October, 2007.

(S.C.Dharmadhikari, J.)